17

A

File No. 124/35

19

Collection No.

H.J.P.

2/1/47

Mysore Residency
Bangalore

3/7.

~~Pros.~~ Serial Nos. 1 – 4.

S. N. 2 & 3 destroyed
3/9/45

Subject.

Income Tax Review petition No. 8 from Messrs. Davidson & Co.,

Previous References.

Indexed

Later References.

A
18/8/45

B
3/5

NOTES AND PRECIS.

P.U.C. D.No. 42 S.N. 1

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(1) The assessment and appeal records may be called for.

Usual draft submitted.

18-1-35

21/1/35

S.N. 2
Issued No. 124/35/R.O.I dated the 26th January 1935.

Await till 26-2-35

P.U.C. D.No. 1095 S.N. 3

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(2) The facts of the case are as follows:-

The assessee (Messrs Davidoss & Co) returned a loss (E) of Rs. 457-10-2 on a turn over of Rs. 87,170-15-11 for the assessment year 1933-34. The opening stock in the statement of account was not the accepted closing stock of the year previous as the assessee did not furnish a return or produce his accounts for the assessment year 1932-33. The Income-tax Officer therefore proposed to arrive at the profit on a (H) ~~adopt~~ per centage basis and also to assess the remittance of Rs. 15,000/- from City business. Mr. Shankar Rao the advocate who appeared before the Incometax Officer agreed about remittances from the City and as --

Income basis

regards

regards per centage he agreed that at least so far as the year in question was concerned a percentage on the turnover had to be taken to arrive at the profit. As regards the rate he asked the Income-tax Officer to put it to the assessee. The assessee was not helpful as he said he lost on his -- turn-over of about Rs. 90,000 a sum of about Rs.500/- . In other words he wanted the Income-tax Officer to accept his return. The Income-tax Officer proposed ~~in the rate~~ in the draft assessment order a profit of 15% on the Turnover. ~~at 15%~~. Having regard to the nature of the assessee's business he reduced it (in the final Assessment order) to 12½% net ~~on the turnover~~ which he considered to be a very fair estimate and assessed him on a total income of Rs. 22,368/-

Business	10,896
City income	11,472
	22,368

(3) The assessee appealed to the Assistant Commissioner. Mr. Shankar Rao, the Advocate who appeared before the Income-tax Officer and agreed to ~~the adoption of the~~ estimate the income on a percentage basis argued the appeal. But it is stated that the grounds of appeal were not drafted by him. The appeal was rejected. The notes put up in this connection by the Income-tax -- Officer may kindly be perused.

(4) The petitioners have now applied to the Commissioner of Income-tax for review of the proceedings under Section

33 of the Act.

(5) They say that 12½% is too high a basis and that most -- piece goods dealers doing similar business ~~to that of the petitioners~~ are taxed only on a 7 to 8 per cent profit basis. The Income-tax Officer considered 12½% to be a very fair estimate.

(6) They say that the Income-tax Officer treated the sum of Rs. 11,472/- received by way of profits at the City office as profits received in the C.& M. Station and that he was incorrect in doing so as the said sum was part of capital transferred ~~in cash and goods to the extent of Rs. 15,000/-~~ from the City to the Civil and Military Station. But they have not proved that the remittance was capital and not income.

(7) The petitioners request that they may be heard on the petition. Under Section 33, the Commissioner is not bound to hear the petitioners or their representative unless he intends to pass an order 'prejudicial' to the petitioners. A prejudicial order is one which places the person concerned in a worse position than he was in before, and clearly excludes an order in which the Commissioner declines to interfere: Sundaram's Law of Income-tax, page 831.

(8) Submitted for orders. If the Commissioner wishes to hear

hear counsel for the petitioners before passing order, a date and time for his appearance may kindly be fixed.

(from para. 2)

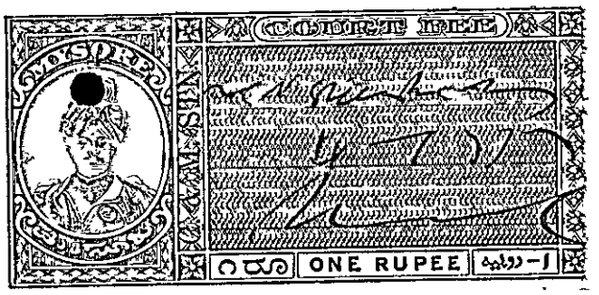
22-4-35

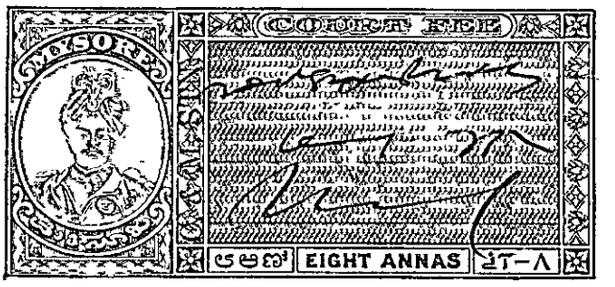
22.4.35

S.N. (4) Issue

Record

CORRESPONDENCE.





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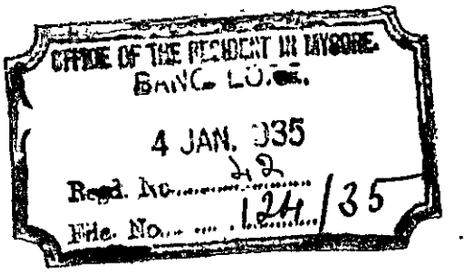
S.N.1



Before the Commissioner of Income Tax,

Civil and Military Station, Bangalore.

Income Tax Appeal No. 8 1935.

Petitioners:-

Messrs. Davidoss & Co.,

The application of Davidoss & Co., of 15 and 16, Commercial Street, Bangalore, under Section 33 of the Indian Income Tax Act sheweth as follows:-

1. In assessing the petitioners, the Income Tax Officer assessed them on the basis of their having earned a nett profit of 12½ per cent on their total sales of Rs. 87,170-15-11 during the year of assessment.

2. The petitioners submit that this is too high a basis and that most piece goods dealers doing similar business to that of the petitioners are taxed on a 7 to 8 per cent profit basis.

3. The actual profit and loss account was before the Income Tax Officer which showed a nett loss of Rs. 457-10-2 during the year. The Income Tax Officer would not accept these figures though they

were based on accounts which were produced before him and with which he had no fault to find except that he stated that the -- opening stock is not the accepted closing stock to the year previous as the assessee had not produced his books the previous year.

4. The non-production of accounts the previous year could not be the basis for any inference, that these accounts were incorrect.

5. The In-Come Tax Officer ~~xxxxxx~~ seems to have misunderstood the representations made by Mr.B. Shanker Row, Advocate, who appeared for the petitioners before him.

6. The Income Tax Officer treated the sum of Rs 11,472/- received by way of profits at the City office as profits received in the Civil and Military Station. He was incorrect in doing so as the said sum is part of capital transferred in cash and goods to the extent of Rs 15,000/- from the City to the Civil and Military Station. It is straining matters a good deal to presume that the whole of the profits derived at the City were transmitted to the Civil and Military Station as profits.

7. An appeal was filed from the order of the Income Tax Officer before the Assistant Commissioner of Income Tax. The Assistant -- Commissioner of Income Tax, placed undue weight

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on certain admissions supposed to have been made by Mr. B. Shanker Row and which were explained away by Mr. Shanker Row in his grounds of appeal and without entering on the merits of the case proceeded to uphold the assessment of the Income Tax Officer on the basis of the so called acquisence of Mr. B. Shanker Row.

8. Due consideration does not appear to have been given by the Assistant Commissione of Income Tax to Mr. Shanker Row's representations and explanations and the petitioners feel agrieved that the case has not been judged on its own merits but has been disposed off on extraneous grounds. Wherefore the petitioners pray that a chance may be given to them to place their case on due considerations on the merits, that they may be heard on this petition and that it may be held that they ~~do~~ are not liable to pay tax on their business in the C & M. Station -- during the assessment year or that the assessment order may be revised. The petitioners are ready and willing to have their accounts checked and audited by any firm of Chartered Accountants if they should be directed to ~~do~~ so.

E. Krobalamurti
Advocate for Petrs.
Bangalore, 4th Jan. 35.

Petitioners.

We do hereby declare that what has been stated above is true to our knowledge and belief.

Petitioners.

F.No. 14

IN THE OFFICE OF THE ASSISTANT COMMISSIONER OF INCOMETAX,
Civil and Military Station, Bangalore.

6th December, 1934.

Income-tax Appeal No.13 of 1934-35.

Instituted on the 18th September, 1934 from the order of the Income-tax Officer, C.& M.Station, Bangalore.

MESSRS. DAVIDOSS & CO.,
Commercial Street, Bangalore. APPELLANTS.

Date of hearing: 1st November 1934.

Present for appellant: Mr. B. Shankar Rao, B.A., LL.B., Advocate.

Appellate Order and Grounds of Decision.

The appeal resolves itself into two grounds

(1) The Income-tax Officer should not have estimated the income, because the accounts were before him

(2) the excess remittances to the Civil and Military Station were remittances of capital and not of income, and were not taxable

2. Before dealing with these grounds, the manner in which the assessment was made deserves comment. The appellant was represented by an agent - in this case an advocate - who came to an agreement with the Income-tax Officer regarding the assessment. The privilege of being represented by an agent was introduced in the Act of 1922. Such agent may be an employee, an accountant, or any other person, but he is presumably selected by the assessee as the person having the best knowledge of his accounts. He is entitled to produce evidence and give explanations regarding any doubtful points, and in fact stands in the shoes of the assessee himself. It is in my view an untenable contention that an agreement reached between such a person and the Income-tax Officer does not bind the assessee. But there is an attempt made in the

appeal

5

appeal to say that the Income-tax Officer misunderstood the agent. This is however a question of fact which the records do not support.

3. The grounds of appeal are the same as those raised during the assessment. In the absence of proved and accepted closing stock of the previous year which should be the opening stock of the year under consideration, the Income-tax Officer had no option but to estimate the income. This was acceptable to the assessees' agent, and the argument that the failure of the assessees to produce accounts for a particular year should not result in "perpetually" assessing the income on an estimate was met by assuring him that the closing balance of the year under consideration, of which the accounts had been scrutinised, would form the opening balance of the following year. I find no substance therefore in this ground of appeal.

4. Regarding the second ground it is for the assessee to show that the remittances whether of cash or goods were of capital and not of income. Not only did his agent fail to do this, to the satisfaction of the Income-tax Officer, but he apparently dropped this objection at the time of assessment. I see no reason therefore to uphold it at this stage.

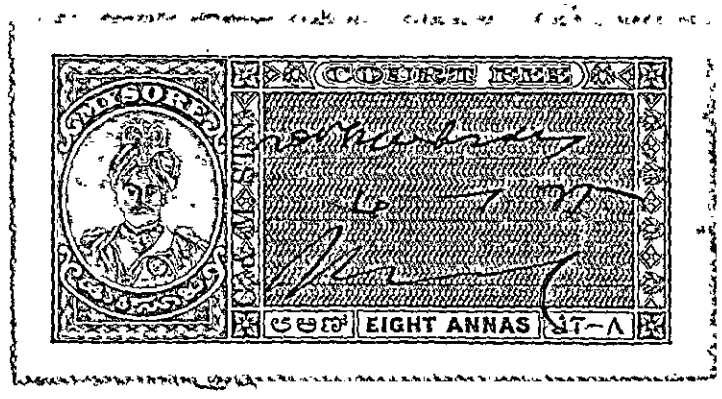
5. In the result the assessment is upheld and the appeal is dismissed.

ASSISTANT COMMISSIONER.

To the appellant
with the demand notice
returned.

MVS.
10/12.

DESPATCHED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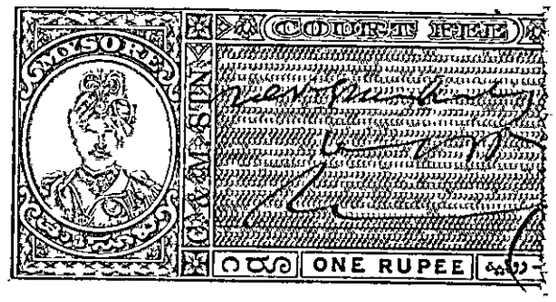

Before the Commissioner of Income Tax

~~In the Court of the District~~

Civil and Military Station, Bangalore.

I.T. Appeal **Suit No.** **of 1934.**

Plaintiff. **Defendant.**

Petitioners
Messrs. Parrish & Co. } *Versus.* {

We the petitioners above named do hereby nominate and appoint Mr. C. N. Suryaprakas, B.A., B.L., Advocate, in the above suit, empowering him to appear for and on our behalf in the above suit, to take all and any steps which may be necessary, arising out of or in connection with the above suit, either during its progress or after its decision, to sign and subscribe his name to any document which he may deem proper, to execute any decree that may be passed and to receive out of the said Court any sum of money which may be lodged or become payable or receivable and on receipt thereof to grant receipts or other sufficient discharges for the same, to withdraw, compromise, or refer the said suit to arbitration, to appoint one or more substitute or substitutes and to act and perform all other matters and things relating to the said suit or connected therewith, and to act in the premises as fully and effectually to all intents and purposes as we might do if personally present and did the same. And we do hereby agree to pay all fees, costs, charges and expenses which may be incurred and to allow, ratify and confirm all and singular whatsoever the said Advocate shall lawfully do or cause or procure to be done in the premises by virtue of these presents.

In witness whereof we have hereunto set our hand this 21st day of December 1934

Parrish & Co.

Accepted
E. Thobalaraik
C. N. Suryaprakas

Advocate
For petitioners.

Signed before me by the executant who is known to me.

C. N. Suryaprakas

Official Receiver.

~~In the Court of~~

Before the commissioner
~~The District~~ of Income Tax

C. & M. Station, Bangalore.

I.T. Appeal ~~S.~~ No. ..... of 1934.

petitioners.
~~Plaintiff~~ Messrs. Davidoss & Co.

Vs.

~~Defendant~~

Filed 4-1-35

Hearing

C. N. SURYA PRAKAS, B.A., B.L.,
E. Akbalamath BABL
ADVOCATE FOR THE ~~Plaintiff~~. ~~Defendant~~. petitioners.

There are really only two points in the appeal:

(1) the I.T.O should not have estimated the income as the accounts were before him

(2) the excess remittances to the C & M Station business from the City Branch was a remittance of capital and not of income, and therefore should not have been taxed.

2. Before dealing with these contentions, I wish to point out that the appellant is not right in stating that the Advocate who represented him in the I.T.Proceedings before the I.T.O was not competent to come to an agreement with the I.T.O as regards the assessment.

This is an important matter, as, if the assessee's contentions ~~xxx~~ is accepted, the proceedings before the I.T.O at which advocates, clerks, or accountants appear as assessee's representatives, would be a farce.

The privilege of being represented by an agent is a new privilege introduced by the I.T. Act of 1922 - section 61.

Please see the last sub paragraph of para 71 of the I.T.Manual (page 216). It says that the representative may be an employee, an accountant, or any other person (e.g.an Advocate), and he is presumed to have been selected by the assessee as the person having the best knowledge of ~~xxx~~ his accounts and financial position, and such a person is entitled to give explanations and produce evidence regarding any points of doubt that may arise.

To say that an agreement reached between such a person and the I.T.O does not bind the assessee is obviously absurd: it is as bad as saying that assessee's own acceptance does not bind him !

3. There is an attempt made in the appeal to say that the I.T.O. must have misunderstood the assessee. The position taken by the assessee is this: if I.T.O. understood the advocate perfectly, the advocate's acceptance does not bind the assessee; if I.T.O misunderstood the advocate, of course

the advocate's acceptance does not bind hi… .

But this understanding or misunderstanding is a question of fact. And I have assured myself, by sending for the Advocate after the receipt of this appeal, that there has been no misunderstanding at all.

It now appears that Mr. B. Sankar Rao, the Advocate who appeared before me, is the Advocate who is to argue the appeal, although the grounds of appeal were not drafted by him. It will be interesting (and instructive to me also to see what the Advocate will say to the A.C. on 31-10-34).

4. As regards the main issues (pl. see para 1 above) = grounds of appeal. These were the very questions raised in reply to the Draft order, and after thoroughly going into the questions with the assessee's representative, the agreed assessment was made.

Regarding issue (1), the advocate's plea was that failure of the assessee to produce accounts in a particular year should not result in perpetually throwing out his accounts and estimating his income. This was met by assuring him that as the I.T.O has examined the accounts of the year under consideration, the closing balance of this year will form the opening balance of the following year - s that the accounts need not be rejected for ever.

The Advocate dropped this objection after hearing this explanation. Pleasee see my note dated 18-8-34.

5. Regarding the second point also, it was after a full discussion that the Advocate accepted that the excess remittance was assessable.

It is for the assessee to prove that the remittance is one of Capital and not of income. The ordinary presumption is that it is from income. There are High Court rulings to this effect. The Advocate agreed about this - that the onus of proof is upon the assessee, and that as proof was not possible, the assessment must be made on the excess remittance. He however drew a distinction between cash recd. in the Station from the City Branch, and goods

so

so received. But I pointed out High Court decisions which treated cash and goods alike. The Advocate agreed finally to the assessment of the total excess remittance.

In the appeal, almost the same words used in reply to the D.O. are used. These arguments are not therefore ~~xxxx~~ new, and were fully considered and settled before the assessment was made. And the Advocate representative of the assessee agreed. Unless therefore the A.C. admits that the assessee is not bound by his representative's acceptance, or the Advocate is prepared to say that he did not accept my conclusions, the assessee has no case.

Sd. S.Kuppuswami Naidu

4.10-34

Note

I may point out that the Advocate appeared without a Vakalat at first (to ask for an adjournment) and the assessee was told about it. The Vakalat and reply to draft order were filed together thereafter: pl see para 3 of the Vakalat.

S.N.4

IN THE OFFICE OF THE COMMISSIONER OF INCOME-TAX,
CIVIL AND MILITARY STATION, BANGALORE.

Issued
16/5/35

No.F.124-35
R.O.I.

Dated Bangalore, the 16th May 1935.

Income-Tax Review petition No.8 of 1934-35.

Petitioners:-

Messrs. Davidoss and Co.,
15 and 16 Commercial Street,
Bangalore.

ORDER.

The position in regard to the acceptability of the accounts has been clearly and correctly stated by the Assistant Commissioner in the third paragraph of his Order in Appeal. The same applies to the remittance from the City branch, which has been dealt with in the fourth paragraph of the same Order. The only point remaining for consideration is whether the basis of 12½ per cent profit is too high. In his draft Assessment Order the Income Tax Officer had originally fixed the figure at 15 per cent; but on the representation of the assessee's agent, and having regard to the nature of the assessee's business, he reduced it to 12½ per cent in the final Assessment Order. The Income Tax Officer is in a position to judge what a fair estimated rate of profit on a business such as that of the assessee should be. He was given no assistance in this respect by the assessee or his agent; and there is nothing to support the claim which is now made in the review petition that most piece goods dealers doing similar business to that of the petitioners are taxed on a 7 to 8 per cent profit basis.

Had

Had this contention been correct, the assessee or his agent should have made it before the Income Tax Officer at the time when the Draft Assessment Order was being considered. I therefore see no reason to interfere; and the petition is rejected.

15/5. o/c.

COMMISSIONER OF INCOME-TAX.

To

M.R.Ry. Rao Sahib C.N. Surya Prakas, Avl., B.A., B.L.,
Counsel for petitioners.

The Assistant Commissioner of Income-Tax, Civil and Military Station, Bangalore, with records returned.

PKH